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LOWE HAUPTMAN GILMAN & BERNER, LLP (22429)  
Suite 310  
1700 Diagonal Road  
Alexandria, VA 22314

EXAMINER

CHU, GABRIEL L

ART UNIT	PAPER NUMBER
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2114

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/843,148

Applicant(s)

GOLD ET AL.

Examiner

Gabriel L. Chu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-23 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claims 11, 12, and 21 are objected to because of the following informalities:

Referring to claim 11, "delete" is understood to refer to "deleted".

Referring to claim 12, "entities" is understood to refer to "entity".

Further referring to claim 12, "and. Configuration" is understood to refer to "and configuration".

Referring to claim 21, "said operating system" is understood to refer to "said primary operating system", correcting for antecedence.

Appropriate correction is required.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 21-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims

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1-12 of copending Application No. 09/842872. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to the restoration of a primary operating system from a backup operating system utilizing an emergency backup operating system, and also restoring user settings (configuration) data. Although, in claim 23 of the instant application, 09/842872 does not specifically claim the types of configuration data that can be stored, network configuration data, administration security data, installed user data, user settings data, and back-up schedule data are all well known forms of settings data in the art. Examiner takes official notice for these types of data. A person of ordinary skill in the art at the time of the invention would have been motivated to store and restore these types of data because they enable functionality specific to the computer and the restoration thereof facilitates continuity after disaster recovery.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 8-10, 12-14, 17-19, and 21 are rejected under 35

U.S.C. 102(b) as being anticipated by US 5469573 to McGill, III et al. Referring to

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claim 1, McGill, III et al. disclose a method of restoring an operational state of a computer entity, said computer entity comprising: at least one data processor; at least one data storage device (See figure 1.); a primary operating system capable of running said computer entity (From line 46 of column 3, "The disk operating system of the embodiment described herein is IBM OS/2 (versions 1.2, 1.3x, 2.0 and 2.x), but could also be Microsoft MS-DOS, Microsoft Windows 3.x, UNIX, or another operating system."); a secondary operating system capable of rebuilding said primary operating system (From line 40 of column 4, "To recover the fully configured operating system onto the hard disk 16, the PC system is started, or booted, from the bootable recovery diskette 52."); and a copy of said primary operating system in an as manufactured state, stored on said data storage device (From line 19 of column 5, "Prior to performing a recovery or loading operation with this invention, a PC is fully loaded and configured (100) as desired with the operating system, device drivers, configuration files, and application software including a tape backup program. The tape backup program should be capable of backing up the entire system in a manner where individual data files can be retrieved from the backup media and restored to the hard drive, rather than requiring a restoration of the entire image of the hard drive. One suitable backup program is Sytos Plus, which is commercially available from Sytron Corporation, 134 Flanders Road, Westboro, Mass. 01581, the assignee of the present application. Next, a partial or full backup (102) of the PC hard disk is made to create a restorable backup media set (103) containing a copy of any or all files currently residing on the PC hard disk, including all operating system

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files, configuration files, and device drivers. This backup media set will be used as the source for the operating system subsequently loaded or restored onto the PC hard drive.”); said method comprising the steps of: booting said computer entity to operate from said secondary operating system (From line 40 of column 4, “To recover the fully configured operating system onto the hard disk 16, the PC system is started, or booted, from the bootable recovery diskette 52.”); and under control of said secondary operating system, rebuilding said primary operating system from said copy of said primary operating system (From line 1 of column 6, “After a hard disk error affecting the operating system, the PC typically will be incapable of starting (i.e., booting) from the hard disk. Operating system errors will typically result in unreliable operation. Hard disk crashes and other problems that affect the physical hard drive media often require that the hard drive be reformatted and/or repartitioned. In either of these cases, the operating system of the PC needs to be restored to the hard disk before normal hard disk operation of the PC can resume. To begin the recovery process, the operator inserts (200) the backup tape containing the operating system files to be restored into the PC tape drive. Next, the operator starts (i.e., boots) (202) the PC from the recovery diskette which loads an initial, temporary operating system into the memory of the PC. The recovery diskette also supplies this initial operating system with the necessary system configuration files and device drivers, i.e., the files previously copied to the recovery diskette from the fully configured PC.”).

Referring to claim 2, McGill, III et al. disclose erasing said primary operating system prior to rebuilding said primary operating system from said

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copy of said primary operating system (From line 48 of column 2, "In yet other preferred embodiments, the method includes initializing the storage device prior to the step of loading the desired operating system files from the first media to the storage device. Initializing includes formatting and partitioning the storage device.").

Referring to claim 8, McGill, III et al. disclose restoring data describing default application settings used by at least one application program of said computer entity (From line 19 of column 5, "Prior to performing a recovery or loading operation with this invention, a PC is fully loaded and configured (100) as desired with the operating system, device drivers, configuration files, and application software including a tape backup program. The tape backup program should be capable of backing up the entire system in a manner where individual data files can be retrieved from the backup media and restored to the hard drive, rather than requiring a restoration of the entire image of the hard drive. One suitable backup program is Sytos Plus, which is commercially available from Sytron Corporation, 134 Flanders Road, Westboro, Mass. 01581, the assignee of the present application. Next, a partial or full backup (102) of the PC hard disk is made to create a restorable backup media set (103) containing a copy of any or all files currently residing on the PC hard disk, including all operating system files, configuration files, and device drivers. This backup media set will be used as the source for the operating system subsequently loaded or restored onto the PC hard drive.").

Referring to claim 9, McGill, III et al. disclose deleting an application data

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generated by at least one application program of said computer entity (From line 19 of column 5, "Prior to performing a recovery or loading operation with this invention, a PC is fully loaded and configured (100) as desired with the operating system, device drivers, configuration files, and application software including a tape backup program." Further, from line 48 of column 2, "In yet other preferred embodiments, the method includes initializing the storage device prior to the step of loading the desired operating system files from the first media to the storage device. Initializing includes formatting and partitioning the storage device.").

Referring to claim 10, McGill, III et al. disclose said boot of said secondary operating system is activated automatically under conditions selected from the following set: a failure of said primary operating system; a failure of a boot from a partition of said data storage device containing said primary operating system (From line 1 of column 6, "After a hard disk error affecting the operating system, the PC typically will be incapable of starting (i.e., booting) from the hard disk. Operating system errors will typically result in unreliable operation. Hard disk crashes and other problems that affect the physical hard drive media often require that the hard drive be reformatted and/or repartitioned. In either of these cases, the operating system of the PC needs to be restored to the hard disk before normal hard disk operation of the PC can resume. To begin the recovery process, the operator inserts (200) the backup tape containing the operating system files to be restored into the PC tape drive. Next, the operator starts (i.e., boots) (202) the PC from the recovery diskette which loads an initial, temporary operating system into the memory of the PC. The recovery diskette also supplies



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this initial operating system with the necessary system configuration files and device drivers, i.e., the files previously copied to the recovery diskette from the fully configured PC. In this embodiment, the system is started from the recovery diskette, which includes a copy of the files on the OS/2 Installation diskette distributed with the OS/2 operating system.”).

Referring to claim 12, McGill, III et al. disclose resetting said computer entity by rebooting from said secondary operating system (From line 40 of column 4, “To recover the fully configured operating system onto the hard disk 16, the PC system is started, or booted, from the bootable recovery diskette 52.”); and deleting application data stored on a data storage device of said computer entity (From line 19 of column 5, “Prior to performing a recovery or loading operation with this invention, a PC is fully loaded and configured (100) as desired with the operating system, device drivers, configuration files, and application software including a tape backup program.” Further, from line 48 of column 2, “In yet other preferred embodiments, the method includes initializing the storage device prior to the step of loading the desired operating system files from the first media to the storage device. Initializing includes formatting and partitioning the storage device.”); and recreating default application data on said data storage device (From line 19 of column 5, “Prior to performing a recovery or loading operation with this invention, a PC is fully loaded and configured (100) as desired with the operating system, device drivers, configuration files, and application software including a tape backup program. The tape backup program should be capable of backing up the entire system in a manner where individual

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data files can be retrieved from the backup media and restored to the hard drive, rather than requiring a restoration of the entire image of the hard drive. One suitable backup program is Sytos Plus, which is commercially available from Sytron Corporation, 134 Flanders Road, Westboro, Mass. 01581, the assignee of the present application. Next, a partial or full backup (102) of the PC hard disk is made to create a restorable backup media set (103) containing a copy of any or all files currently residing on the PC hard disk, including all operating system files, configuration files, and device drivers. This backup media set will be used as the source for the operating system subsequently loaded or restored onto the PC hard drive.”).

Referring to claim 13, McGill, III et al. disclose recreating default databases on said data storage device (From line 19 of column 5, “Prior to performing a recovery or loading operation with this invention, a PC is fully loaded and configured (100) as desired with the operating system, device drivers, configuration files, and application software including a tape backup program. The tape backup program should be capable of backing up the entire system in a manner where individual data files can be retrieved from the backup media and restored to the hard drive, rather than requiring a restoration of the entire image of the hard drive. One suitable backup program is Sytos Plus, which is commercially available from Sytron Corporation, 134 Flanders Road, Westboro, Mass. 01581, the assignee of the present application. Next, a partial or full backup (102) of the PC hard disk is made to create a restorable backup media set (103) containing a copy of any or all files currently residing on the PC

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hard disk, including all operating system files, configuration files, and device drivers. This backup media set will be used as the source for the operating system subsequently loaded or restored onto the PC hard drive." Wherein a database is a collection of data.).

Referring to claim 14, McGill, III et al. disclose a computer entity comprising: at least one data processor; at least one data storage device (See figure 1.); a primary operating system capable of running said computer entity (From line 46 of column 3, "The disk operating system of the embodiment described herein is IBM OS/2 (versions 1.2, 1.3x, 2.0 and 2.x), but could also be Microsoft MS-DOS, Microsoft Windows 3.x, UNIX, or another operating system."); a secondary operating system capable of rebuilding said primary operating system during a failure of said primary operating system (From line 40 of column 4, "To recover the fully configured operating system onto the hard disk 16, the PC system is started, or booted, from the bootable recovery diskette 52."); a copy of said primary operating system in an as manufactured state (From line 19 of column 5, "Prior to performing a recovery or loading operation with this invention, a PC is fully loaded and configured (100) as desired with the operating system, device drivers, configuration files, and application software including a tape backup program. The tape backup program should be capable of backing up the entire system in a manner where individual data files can be retrieved from the backup media and restored to the hard drive, rather than requiring a restoration of the entire image of the hard drive. One suitable backup program is Sytos Plus, which is commercially available from Sytron Corporation, 134

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Flanders Road, Westboro, Mass. 01581, the assignee of the present application.

Next, a partial or full backup (102) of the PC hard disk is made to create a restorable backup media set (103) containing a copy of any or all files currently residing on the PC hard disk, including all operating system files, configuration files, and device drivers. This backup media set will be used as the source for the operating system subsequently loaded or restored onto the PC hard drive."); and configuration data describing a configuration of said computer entity (From line 19 of column 5, "Prior to performing a recovery or loading operation with this invention, a PC is fully loaded and configured (100) as desired with the operating system, device drivers, configuration files, and application software including a tape backup program. The tape backup program should be capable of backing up the entire system in a manner where individual data files can be retrieved from the backup media and restored to the hard drive, rather than requiring a restoration of the entire image of the hard drive. One suitable backup program is Sytos Plus, which is commercially available from Sytron Corporation, 134

Flanders Road, Westboro, Mass. 01581, the assignee of the present application.

Next, a partial or full backup (102) of the PC hard disk is made to create a restorable backup media set (103) containing a copy of any or all files currently residing on the PC hard disk, including all operating system files, configuration files, and device drivers. This backup media set will be used as the source for the operating system subsequently loaded or restored onto the PC hard drive.").

Referring to claim 17, McGill, III et al. disclose an administration interface configured to allow a manually activated trigger of a rebuild of said primary

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operating system (From line 10 of column 6, "After a hard disk error affecting the operating system, the PC typically will be incapable of starting (i.e., booting) from the hard disk. Operating system errors will typically result in unreliable operation. Hard disk crashes and other problems that affect the physical hard drive media often require that the hard drive be reformatted and/or repartitioned. In either of these cases, the operating system of the PC needs to be restored to the hard disk before normal hard disk operation of the PC can resume. To begin the recovery process, the operator inserts (200) the backup tape containing the operating system files to be restored into the PC tape drive. Next, the operator starts (i.e., boots) (202) the PC from the recovery diskette which loads an initial, temporary operating system into the memory of the PC. The recovery diskette also supplies this initial operating system with the necessary system configuration files and device drivers, i.e., the files previously copied to the recovery diskette from the fully configured PC. In this embodiment, the system is started from the recovery diskette, which includes a copy of the files on the OS/2 Installation diskette distributed with the OS/2 operating system.").

Referring to claim 18, McGill, III et al. disclose an automatic trigger operable to detect when a fault occurs in said primary operating system, and upon detecting a fault in said primary operating system, to trigger a boot from said secondary operating system (From line 10 of column 6, "After a hard disk error affecting the operating system, the PC typically will be incapable of starting (i.e., booting) from the hard disk. Operating system errors will typically result in unreliable operation. Hard disk crashes and other problems that affect the

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physical hard drive media often require that the hard drive be reformatted and/or repartitioned. In either of these cases, the operating system of the PC needs to be restored to the hard disk before normal hard disk operation of the PC can resume. To begin the recovery process, the operator inserts (200) the backup tape containing the operating system files to be restored into the PC tape drive. Next, the operator starts (i.e., boots) (202) the PC from the recovery diskette which loads an initial, temporary operating system into the memory of the PC. The recovery diskette also supplies this initial operating system with the necessary system configuration files and device drivers, i.e., the files previously copied to the recovery diskette from the fully configured PC. In this embodiment, the system is started from the recovery diskette, which includes a copy of the files on the OS/2 Installation diskette distributed with the OS/2 operating system.").

Referring to claim 19, McGill, III et al. disclose said data storage device comprises at least one disk drive (From figure 2, element 16.).

Referring to claim 21, McGill, III et al. disclose a data storage device divided into a plurality of partition areas; a primary operating system stored on a first said partition area (From figure 2, element 18.); a secondary operating system stored on a second said partition area (From figure 2, element 52.); said method comprising the steps of: storing a back up copy of said operating system on a third said partition area (From figure 2, elements 54 and 52. Further, from line 19 of column 5, "Prior to performing a recovery or loading operation with this invention, a PC is fully loaded and configured (100) as desired with the operating

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system, device drivers, configuration files, and application software including a tape backup program. The tape backup program should be capable of backing up the entire system in a manner where individual data files can be retrieved from the backup media and restored to the hard drive, rather than requiring a restoration of the entire image of the hard drive. One suitable backup program is Sytos Plus, which is commercially available from Sytron Corporation, 134 Flanders Road, Westboro, Mass. 01581, the assignee of the present application. Next, a partial or full backup (102) of the PC hard disk is made to create a restorable backup media set (103) containing a copy of any or all files currently residing on the PC hard disk, including all operating system files, configuration files, and device drivers. This backup media set will be used as the source for the operating system subsequently loaded or restored onto the PC hard drive.”).

6. Claims 3-7, 15, 16, 20, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5469573 to McGill, III et al. as applied to claims 1, 14, and 21 above. Referring to claim 3, although McGill, III et al. disclose restoring configuration settings of said computer entity from configuration data stored in a partition of said data storage device separate to said primary operating system (From line 12 of column 6, “Next, the operator starts (i.e., boots) (202) the PC from the recovery diskette which loads an initial, temporary operating system into the memory of the PC. The recovery diskette also supplies this initial operating system with the necessary system configuration files and device drivers, i.e., the files previously copied to the recovery diskette from the fully configured PC.”). Although McGill, III et al. do not specifically disclose this

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configuration data can be in a partition separate from said secondary operating system, storing data in another area is notoriously well known in the art.

Examiner takes official notice for storing data in a specific partition. A person of ordinary skill in the art at the time of the invention would have been motivated to store data to a partition because the memory was set aside for that purpose. The mere grouping of data is, further, a matter of design.

Referring to claim 4, McGill, III et al. disclose said configuration data comprises data describing one or more application settings for running an application on said computer entity (From line 39 of column 5, "Next, a recovery diskette is prepared from the fully configured PC by copying various files from the hard disk onto the recovery diskette, which essentially define the current PC configuration. These copied files include vital operating system configuration files (104), system configuration files (106), and device drivers (108) which are required for the proper operation of the hardware, operating system, and attached devices. The most important device driver is the backup device driver, e.g., backup tape drive device driver, which must be available to activate the backup tape drive during the recovery or loading operation.").

Referring to claims 5, 16, and 23, although McGill, III et al. do not specifically disclose said configuration data can comprise data selected from the set: a network configuration data describing a networking configuration of the computer entity; an administration security data describing administration security settings applied to the computer entity; an installed user data describing installed users on the computer entity; a user settings data describing individual



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settings for at least one installed user on the computer entity; and a back-up schedule data describing a back-up schedule for backing up data of said computer entity, network configuration data, administration security data, installed user data, user settings data, and back-up schedule data are all well known forms of settings data. Examiner takes official notice for these types of data. A person of ordinary skill in the art at the time of the invention would have been motivated to store and restore these types of data because they enable functionality specific to the computer and the restoration thereof facilitates continuity after disaster recovery. From line 48 of column 1, "A data loss affecting the operating system itself is typically not recoverable by using the tape backup system, and requires that the operating system be reloaded onto the hard disk and configured anew. Where the operating system was "factory loaded," reloading of the operating system onto the hard disk outside the factory may consume many hours of valuable user and technical support time."

Referring to claim 6, although McGill, III et al. do not specifically disclose applying a CHECKsum to said configuration data prior to storing said configuration data in its said partition, checking data for corruption is notoriously well known in the art. Examiner takes official notice for checksums. A person of ordinary skill in the art at the time of the invention would have been motivated to calculate the checksum of data prior to storage because, typically, correct data is desired for use, and specifically in data restoration environments.

Referring to claim 7, although McGill, III et al. do not specifically disclose checking said configuration data for corruption, prior to restoring said

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configuration settings, checking data for corruption is notoriously well known in the art. Examiner takes official notice for checking for corrupted data. A person of ordinary skill in the art at the time of the invention would have been motivated to check for corruption of data prior to restoring because, typically, correct data is desired for use, and specifically in data restoration environments.

Referring to claim 15, McGill, III et al. disclose said primary operating system is stored in a first partition area of said data storage device (From figure 2, element 18.); said secondary operating system is stored in a second partition area of said data storage device (From figure 2, element 52.); said copy of said primary operating system is stored in a third partition area of said data storage device (From figure 2, elements 54 and 52.); and configuration data is stored in a partition area of said data storage device (From line 12 of column 6, "Next, the operator starts (i.e., boots) (202) the PC from the recovery diskette which loads an initial, temporary operating system into the memory of the PC. The recovery diskette also supplies this initial operating system with the necessary system configuration files and device drivers, i.e., the files previously copied to the recovery diskette from the fully configured PC."). Although McGill, III et al. do not specifically disclose said configuration data is stored in a fourth partition area of said data storage device, storing data in another area is notoriously well known in the art. Examiner takes official notice for storing data in a specific partition. A person of ordinary skill in the art at the time of the invention would have been motivated to store data to a partition because the memory was set aside for that purpose. The mere grouping of data is, further, a matter of design.

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Referring to claim 20, although McGill, III et al. do not specifically disclose said computer entity is devoid of a user console running directly from a said operating system of said computer entity, operating a computer remotely is notoriously well known in the art. Examiner takes official notice for remote administration of a network appliance. A person of ordinary skill in the art at the time of the invention would have been motivated to remotely administer a network appliance because, among other reasons, it increases the flexibility of maintaining a network.

Referring to claim 22, McGill disclose configuration data (From line 12 of column 6, "Next, the operator starts (i.e., boots) (202) the PC from the recovery diskette which loads an initial, temporary operating system into the memory of the PC. The recovery diskette also supplies this initial operating system with the necessary system configuration files and device drivers, i.e., the files previously copied to the recovery diskette from the fully configured PC."). Although McGill, III et al. do not specifically disclose automatically updating configuration data stored in a fourth partition area of said data storage device, updating backup data is notoriously well known in the art. A person of ordinary skill in the art at the time of the invention would have been motivated to update backup data because a system that is in use undergoes change, and the latest data is frequently the most valuable.

***Allowable Subject Matter***

7. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

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limitations of the base claim and any intervening claims. Referring to claim 11, the prior art does not teach or fairly suggest, in light of the parent claim, reading a plurality of settings flags to determine whether a rebuild of said primary operating system is triggered with application data delete or with application data preserved.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5713024 to Halladay

US 5745669 to Hugard et al.

US 5829045 to Motoyama

US 6016553 to Schneider et al.

US 6145088 to Stevens

US 6170055 to Meyer et al.

US 6195695 to Cheston et al.

US 6314532 to Daudelin et al.

US 6385707 to Maffezzoni

US 6519762 to Colligan et al.

US 6543004 to Cagle et al.

US 6625754 to Aguilar et al.

WO 95/22794 to Yen

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is


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(703) 308-7298. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel, Jr. can be reached on (703) 305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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ROBERT BEAUSOLIEL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100